

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DREW PATTERSON BRETZ,

Petitioner,

v.

UNITED STATES DISTRICT COURT,

Respondent.

Case No. 1:20-cv-00663-JDP

FINDINGS AND RECOMMENDATIONS
THAT COURT ABSTAIN FROM
EXERCISING JURISDICTION AND
DISMISS THE CASE WITHOUT PREJUDICE

OBJECTIONS DUE IN FOURTEEN DAYS

ECF No. 1

ORDER DISCHARGING MAY 15, 2020
ORDER TO SHOW CAUSE

ECF No. 4

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

Petitioner Drew Patterson Bretz, a state pre-trial detainee without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2241.¹ ECF No. 1. Petitioner claims that his continued pre-trial detention violates his constitutional rights. *Id.* at 3. Specifically, he claims that he is being held in state detention on a 2017 federal warrant without ever being formally charged with a federal crime. *Id.* On May 15, 2020, we ordered petitioner to show cause why his petition should not be

¹ Although petitioner has filed his petition on a California state habeas petition form, we will consider his petition under 28 U.S.C. § 2241—the proper vehicle for state pretrial detainees seeking federal habeas relief. *See McNeely v. Blanas*, 336 F.3d 822, 824 n.1 (9th Cir. 2003).

1 dismissed for failure to exhaust his claim before the state courts. ECF No. 4. On June 10, 2020,
 2 petitioner responded to our order to show cause, stating that he has taken all steps available to
 3 him to exhaust his claims.² ECF No. 7. We will discharge our order to show cause. ECF No. 4.
 4 However, because petitioner's state criminal case is ongoing (and he is detained in that case), we
 5 recommend that the court decline to exercise jurisdiction over this petition, dismiss the petition
 6 without prejudice, and decline to issue a certificate of appealability.

7 Discussion

8 In *Younger v. Harris*, 401 U.S. 37, 44 (1971), the Supreme Court held that a federal court
 9 generally cannot interfere with pending state criminal proceedings. This holding, commonly
 10 referred to as the *Younger* abstention doctrine, is based on the principle of federal-state comity.
 11 See *id.* In the habeas context, “[w]here . . . no final judgment has been entered in state court, the
 12 state court proceeding is plainly ongoing for purposes of *Younger*.” *Page v. King*, 932 F.3d 898,
 13 902 (9th Cir. 2019). Absent rare circumstances, a district court must dismiss such actions. See
 14 *Cook v. Harding*, 190 F. Supp. 3d 921, 935, 938 (C.D. Cal. 2016), *aff’d*, 879 F.3d 1035 (9th Cir.
 15 2018); *Perez v. Ledesma*, 401 U.S. 82, 85 (1971) (“Only in cases of proven harassment or
 16 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid
 17 conviction and perhaps in other extraordinary circumstances where irreparable injury can be
 18 shown” is federal intervention in an on-going state criminal proceeding appropriate.).

19 Petitioner is currently detained in Fresno County Jail while awaiting trial for his 2017
 20 state domestic violence charges. ECF No. 1 at 2. Petitioner claims that he was granted bail for
 21 his state charges but is in continued detention solely due to a federal warrant for an unrelated
 22 federal criminal charge. *Id.* at 3; see *United States v. Bretz*, 1:17-mj-00167-SAB (E.D. Cal. Sept.
 23 25, 2017). Contrary to petitioner's assertions, the Fresno County Superior Court's public docket
 24 reveals that petitioner has been held continually in Fresno County Jail since 2017 on account of
 25 his state domestic violence charges.³ A settlement conference in petitioner's state domestic

26 ² Although insufficient to prove exhaustion for purposes of federal habeas relief, petitioner has
 27 provided proof of two recent grievances he submitted to Fresno County. ECF No. 1 at 7-8.

28 ³ We have reviewed the Fresno County Superior Court's public docket and take judicial notice of
 it per Rule 201 of the Federal Rules of Evidence. See Fresno County Superior Court Smart

1 violence case is scheduled for July 23, 2020. Petitioner has presented no proof that he is being
 2 held on his federal charges, and he has failed to show that extraordinary circumstances warrant
 3 this court's intervention in his state criminal proceedings.⁴ *See Perez*, 401 U.S. at 82; *Carden v.*
 4 *Montana*, 626 F.2d 82, 84 (9th Cir. 1980). Accordingly, this court should decline to intervene.

5 **Order**

6 The May 15, 2020 order to show cause is discharged. ECF No. 4. The clerk of court is
 7 directed to assign this case to a district judge for the purposes of reviewing these findings and
 8 recommendations.

9 **Certificate of Appealability**

10 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district
 11 court's denial of a petition; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253;
 12 *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing § 2254 Cases requires a
 13 district court to issue or deny a certificate of appealability when entering a final order adverse to a
 14 petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th
 15 Cir. 1997). A certificate of appealability will not issue unless a petitioner makes "a substantial
 16 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard requires
 17 the petitioner to show that "jurists of reason could disagree with the district court's resolution of
 18 his constitutional claims or that jurists could conclude the issues presented are adequate to
 19 deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *accord Slack v.*
 20 *McDaniel*, 529 U.S. 473, 484 (2000). Here, petitioner has not made a substantial showing of the
 21 denial of a constitutional right. Thus, we recommend that the court not issue a certificate of
 22 appealability.

23
 24 Search, <https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/Home/Dashboard/29> (search
 25 by name for "Bretz, Drew"). On September 28, 2017, in state criminal case F17903791,
 26 petitioner was remanded into custody, and his bail was set at \$380,000. As of May 14, 2020,
 27 petitioner's bail remained set at \$380,000, and he remained in state custody at the county jail.

28 ⁴ Moreover, petitioner recently sought habeas relief from Fresno County Superior Court. *See*
Bretz v. Fresno County Superior Court, No. 20CRWR685495 (May 5, 2020). In the event this
 petition concerns the same claim as the instant petition, it warrants our abstention. *See Page*, 932
 F.3d at 902.

Findings and Recommendations

For the foregoing reasons, we recommend that the court decline to exercise jurisdiction under the *Younger* abstention doctrine, dismiss the case without prejudice to refiling once petitioner has exhausted any future federal habeas claims before the state courts, and decline to issue a certificate of appealability. ECF No. 1. These findings and recommendations are submitted to the U.S. district judge presiding over the case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within fourteen days of the service of the findings and recommendations, the parties may file written objections to the findings and recommendations with the court and serve a copy on all parties. That document must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The presiding district judge will then review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

IT IS SO ORDERED.

Dated: June 24, 2020


UNITED STATES MAGISTRATE JUDGE

No. 206.